

TENTATIVE

California Regional Water Quality Control Board
San Diego Region

RESOLUTION NO. R9-2005-0238

**RESOLUTION AMENDING THE *WATER QUALITY CONTROL PLAN FOR THE SAN DIEGO BASIN (9)* TO INCORPORATE AUTHORIZATION FOR COMPLIANCE TIME SCHEDULES IN NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM REQUIREMENTS
(BASIN PLAN ISSUE NO. 6)**

WHEREAS, the California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board), finds that:

1. The proposed amendment of the *Water Quality Control Plan for the San Diego Basin (9)* (Basin Plan) described in the recitals below was developed in accordance with Water Code section 13240, *et seq.*
2. This Basin Plan amendment is the result of an investigation of Issue No. 6 on the *Prioritized List of Basin Plan Issues for Investigation from September 2004 to September 2007* (Attachment 1 to Resolution No. R9-2004-0156) adopted by the San Diego Water Board as part of the 2004 Triennial Review of the Basin Plan.
3. The U.S. Environmental Protection Agency (USEPA) allows the inclusion of compliance time schedules in National Pollutant Discharge Elimination System (NPDES) permits for those effluent limitations that implement new (adopted after July 1, 1977), revised, or newly-interpreted water quality objectives, only if explicit authorization for such schedules is included in the Basin Plan (*In the Matter of StarKist Caribe, Inc.*; NPDES Appeal No. 88-5).
4. With certain exceptions, the Basin Plan does not include explicit authorization for compliance time schedules in Waste Discharge Requirements (WDRs) that implement NPDES regulations and the federal Clean Water Act requirements (NPDES requirements).¹
5. NPDES requirements specify water quality based effluent limitations (WQBELs) and other provisions that must be achieved to assure attainment of the water quality objectives (i.e., State water quality standards) applicable to the affected receiving waters. In some cases, immediate compliance with the WQBELs in NPDES requirements may be infeasible.

¹ Pursuant to Chapter 5.5 of the Porter-Cologne Water Quality Act, to avoid the issuance by the USEPA of separate and duplicative NPDES permits for discharges in California that would be subject to the Clean Water Act, the State's WDRs for such discharges implement the NPDES regulations and entail enforcement provisions that reflect the penalties imposed by the Clean Water Act for violation of NPDES permits issued by the USEPA. Thus, the State's WDRs that implement federal NPDES regulations and Clean Water Act requirements serve in lieu of NPDES permits.

6. Dischargers may be unable to comply immediately with new or more stringent WQBELs based on new, revised, or newly interpreted water quality objectives adopted by the San Diego Water Board or State Water Resources Control Board (State Water Board), or that resulted from new information on the characteristics and effects of the discharge. Allowing dischargers time to achieve compliance according to a prescribed time schedule is reasonable under these circumstances.
7. Providing authorization for compliance time schedules in NPDES requirements would provide the San Diego Water Board with an additional means to promote discharger compliance with new or more stringent WQBELs that implement new, revised, or newly interpreted water quality objectives, or that resulted from new information on the characteristics and effects of the discharge, without enforcement proceedings against existing dischargers who are unable to attain immediate compliance.
8. The Basin Plan should be amended to incorporate language authorizing the inclusion of compliance time schedules in NPDES requirements in order to provide the San Diego Water Board with discretion to provide reasonable time for existing dischargers to attain compliance with new or more stringent WQBELs and receiving water limitations in circumstances as described above without subjecting them to enforcement proceedings.
9. The San Diego Water Board has notified all known interested persons and the public of its intent to consider adoption of the proposed Basin Plan amendment in accordance with Water Code section 13244. Interested persons and the public have had reasonable opportunity to participate in review of the proposed Basin Plan amendment. Efforts to solicit public review and comment have included a CEQA scoping meeting and a public workshop held in February 2005 and September 2005 respectively; a public review and comment period of 45-days preceding the public hearing; and a public hearing held on October 12, 2005.
10. The San Diego Water Board has considered all comments pertaining to this Basin Plan amendment submitted to the San Diego Water Board in writing, or by oral presentations at the public hearing held on October 12, 2005. Detailed responses to relevant comments have been incorporated into a Response to Comments document (Appendix 3 to the Technical Report).
11. The San Diego Water Board's basin planning process is certified as "functionally equivalent" to the process of interdisciplinary environmental review prescribed by the California Environmental Quality Act (CEQA) and is therefore exempt from CEQA's requirements to prepare an Environmental Impact Report, Negative Declaration, or Initial Study. The proposed Basin Plan amendment, the supporting technical report, and the environmental checklist form prepared by the San Diego Water Board satisfy the environmental documentation requirements for basin planning activities. A public CEQA scoping meeting was held in February 2005.

The analysis contained in the supporting technical report, the environmental checklist form, and the responses to comments comply with the requirements of the State Water Board's

certified regulatory CEQA process, as set forth in the California Code of Regulations, Title 23, section 3375, *et seq.* and fulfills the San Diego Water Board's obligations for the adoption of regulations "requiring the installation of pollution control equipment, or a performance standard treatment or requirement," as set forth in section 21159 of the Public Resources Code.

12. The San Diego Water Board has considered the costs of implementing the proposed Basin Plan amendment and finds the proposed amendment will not result in any additional economic burden for dischargers.
13. Considering the record as a whole, the proposed Basin Plan amendment will involve no potential for adverse effect, either individually or cumulatively, on wildlife.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The San Diego Water Board hereby adopts the 'Amendment to the *Water Quality Control Plan for the San Diego Basin (9)* to incorporate authorization for Compliance Time Schedules in National Pollutant Discharge Elimination System Requirements (Basin Plan Issue No. 6)' as set forth in Attachment A to this Resolution.
2. The Executive Officer is authorized to sign a Certificate of Fee Exemption for a "*de minimis*" impact finding and shall submit this Certificate in *lieu* of payment of the California Department of Fish and Game (DFG) filing fee.
3. The Executive Officer is directed to submit this amendment to the State Water Board in accordance with Water Code section 13245. The San Diego Water Board requests that the State Water Board approve the Basin Plan amendment and forward it to the Office of Administrative Law and the USEPA for approval.
4. If, during its approval process for this amendment, the State Water Board or Office of Administrative Law determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the San Diego Water Board of any such changes.

I, John H. Robertus, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the California Regional Water Quality Control Board, San Diego Region, on November 9, 2005.

JOHN H. ROBERTUS
Executive Officer

ATTACHMENT A TO RESOLUTION NO. R9-2005-0238

AMENDMENT TO THE *WATER QUALITY CONTROL PLAN FOR THE SAN DIEGO BASIN (9)* TO INCORPORATE AUTHORIZATION FOR COMPLIANCE TIME SCHEDULES IN NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM REQUIREMENTS (BASIN PLAN ISSUE NO. 6)

This Basin Plan amendment incorporates authorization for compliance time schedules in Waste Discharge Requirements that implement National Pollutant Discharge Elimination System regulations and federal Clean Water Act requirements issued by the California Regional Water Quality Control Board, San Diego Region. Chapter 4 of the Basin Plan is amended as follows:

Chapter 4, Implementation

Revise the first sentence of the section titled “National Pollutant Discharge Elimination System (NPDES)” as follows:

Waste Discharge Requirements that implement federal National Pollutant Discharge Elimination System (NPDES) regulations (“NPDES requirements” or “NPDES permits”) are issued to regulate discharges of “pollutants” from point sources to “waters of the United States” to ensure that the quality and quantity of such discharges does not adversely affect surface water quality or beneficial uses.

Add the following section after the section titled “National Pollutant Discharge Elimination System (NPDES).”

COMPLIANCE TIME SCHEDULES

The Regional Board may establish compliance time schedules in NPDES requirements where the Regional Board determines that, for an existing discharger,² achieving immediate compliance in a discharge with new or more stringent water quality based effluent limitations or receiving water limitations that implement new, revised, or newly interpreted water quality objectives,³ and/or that resulted from new knowledge on

² “Existing discharger” means any discharger that is not a new discharger. An existing discharger includes an increasing discharger (i.e., an existing facility with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its existing permitted discharge after a new, revised, or newly interpreted water quality objective becomes applicable). A “new discharger” is defined as any building, structure, facility, or installation from which there is or may be a “discharge of pollutants” (as defined in 40 CFR section 122.2) to surface waters of the San Diego Region, the construction of which commences after a new, revised, or newly interpreted water quality objective becomes applicable.

³ “New, revised, or newly interpreted water quality objectives means” objectives as defined in section 13050(h) of Porter-Cologne, issued, revised or newly interpreted after November 9, 2005. Objectives may be narrative or numeric.

the characteristics and impacts of the discharge is infeasible.⁴ New knowledge about the characteristics and impacts of the discharge that can result in new or more stringent WQBELs or receiving water limitations include, but are not limited to, the following situations:

- Pollutants previously unregulated in an existing discharge are newly regulated because the new information indicates a reasonable potential for the discharge to exceed an applicable water quality objective in the receiving water;*
- Pollutants are newly detected in an existing discharge due to improved analytical techniques;*
- The point of compliance for a receiving water limitation is changed; and*
- The dilution allowance for an existing discharge is changed.*

Compliance time schedules are authorized by this provision only for new or more stringent effluent and/or receiving water limitations that implement water quality objectives issued, revised, or newly interpreted after November 9, 2005, or that resulted from new knowledge on the characteristics and impacts of the discharge for any pollutant for which a water quality objective was issued, revised, or newly interpreted after July 1, 1977.

The compliance time schedule shall include a time schedule for completing or achieving specific actions (including interim effluent limitations) that demonstrate reasonable progress toward compliance with water quality based effluent limitations or receiving water limitations and, thereby, attainment of water quality objectives. The compliance time schedule shall contain a final compliance date, based on the shortest practicable time (determined by the Regional Board at a public hearing after considering the factors identified below) required to achieve compliance. In addition, in all cases, the findings of the NPDES requirements shall specify the final effluent limitations.

NPDES requirements may not include a compliance time schedule that extends beyond five years from the date of order issuance, reissuance or modification. The Regional Board may grant an additional extension of up to five years, but only where the discharger has demonstrated satisfactory progress toward achieving compliance with applicable water quality based effluent limitations and receiving water limitations and the Regional Board concurs with the demonstration. In no case, shall a compliance time schedule for these discharges exceed ten years from the date of adoption, revision, or interpretation of the applicable water quality objective, whichever is the shorter period of time.

Nothing in this provision limits the Regional Board's authority (1) to develop alternate implementation provisions for water quality objectives adopted or revised in the future, or (2) to rely on alternate implementation provisions authorized pursuant to State Board policies for water quality control, State regulations, or federal regulations. Compliance time schedules to meet WQBELs and receiving water limitations that implement

⁴ "Infeasible" means that discharger compliance cannot be accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors.

California Toxics Rule criteria will be limited by the provisions of the State Board "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California."

To document the need for and justify the duration of any such compliance time schedule, a discharger must submit the following information, at a minimum: (1) the results of a diligent effort to quantify pollutant levels in the discharge and the sources of the pollutant(s) in the waste stream; (2) Identification of the sources of the pollutant in the waste stream, documentation of source control efforts currently underway or completed, including compliance with any pollution prevention programs that have been established, and a proposed schedule for additional source control measures or waste treatment needed to meet the WQBELs and/or receiving water limitations; (3) evidence that the discharge quality is the highest that can reasonably be achieved until final compliance is attained; and (4) a demonstration that the proposed schedule is as short as practicable, taking into account economic, technical and other relevant factors. The need for additional information and analyses will be determined by the Regional Board on a case-by-case basis. The need for and justification of the duration of any such compliance time schedule will be subject to Regional Board review and approval.